

Service Date: October 22, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of	)	UTILITY DIVISION
BG Enterprises, Inc. and	)	
U S WEST Communications, Inc.	)	DOCKET NO. D97.12.245
Pursuant to Section 252(e) of the	)	
Telecommunications Act of 1996 for	)	ORDER NO. 6052a
Approval of their Resale Agreement	)	

**ORDER ON SECOND AMENDMENT TO RESALE AGREEMENT**

INTRODUCTION

1. This Order addresses the "Second Amendment to Agreement for Service Resale (Montana)" (Second Amendment) filed by U S WEST Communications, Inc. (U S WEST) on September 18, 1998. The Montana Public Service Commission (Commission) approved the resale agreement between BG Enterprises, Inc. (BG) and U S WEST in Order No. 6052 dated February 24, 1998. The First Amendment to the parties' agreement was filed on June 22, 1998. The Second Amendment superceded the First Amendment, revising the four sections to conform to Commission directives.

2. Order No. 6052 approved the majority of the terms in the parties' agreement. It rejected four sections of the agreement and explained the reasoning in so doing. The unacceptable sections were: (1) Section IV.C.4(d), proof of authorization for placing orders on behalf of end users; (2) Section VII.C.5, the absence of notification to the Commission if termination of service to the reseller was being contemplated; (3) Section VII.Q, the absence of notification to the Commission in connection with dispute resolution; and (4) Section IV.E.7, the

failure to reflect the Commission's conclusions concerning construction of new facilities. The Second Amendment revises these four sections, and is approved as discussed below.

### COMMISSION DECISION

#### Ordering and Maintenance - Section IV.C.4(d), Second Amendment Section 1.1

3. Section IV.C.4(d) of the parties' agreement included a provision that Proof of Authorization (POA) for placing orders on behalf of the end user shall consist of documentation acceptable to U S WEST, which may be obtained by "A prepaid returnable postcard supplied by Reseller which has been signed and returned by the end user." The Reseller then would have to wait 14 days after mailing the postcard before placing an order to change. The Commission rejected this section because it was not consistent with § 69-3-1303, MCA.

4. The parties First Amendment revised Section IV.C.4 by deleting the first paragraph and sub-paragraphs a. through d., replacing subsection IV.C.4 with the following:

Prior to placing orders on behalf of the end user, Reseller shall be responsible for obtaining and have in its possession Proof of Authorization ("POA"). POA shall consist of documentation acceptable to USWC of the end user's selection of Reseller. Such selection may be obtained in any manner consistent with Montana or federal law.

5. The Commission rejected the amended section in the First Amendment in several dockets because it stated that U S WEST's selection of acceptable documentation could be obtained in "any manner consistent with Montana or federal law." Montana law on "slamming" is more prescriptive than the federal law and applies to unauthorized changes in local exchange service as well as unauthorized changes of a long distance carrier. The Commission has stated clearly that the provision must conform to Montana law and that the reference to federal law should be deleted. *See, e.g., In the Matter of the Application of Sterling International Funding,*

Inc. and U S WEST Pursuant to Section 252(e) of the Telecommunications Act of 1996 for approval of their Resale Agreement, Docket No. D97.12.246, Order No. 6053a (May 18, 1998) (the “Sterling docket”). The Second Amendment deletes “or federal” from the last sentence of the section and is now acceptable.

Construction - Section IV.E.7, Second Amendment Section 1.2.

6. The Commission stated that Section IV.E.7 in the parties’ agreement, as first presented, could conflict with the public interest. The Commission rejected that section because it did not consider circumstances which may arise where U S WEST is required by law to construct facilities.

7. The parties redrafted Section IV.E.7 to state:

Resold services are available only where facilities currently exist and are capable of providing such services without construction of additional facilities or enhancement of existing facilities unless otherwise required by Montana Law.

Section IV.E.7 is acceptable as amended.

Payment - Section VII.C.5; Second Amendment Section 1.3

8. Section VII.C in the parties’ agreement detailed the provisions for payment to U S WEST by BG. The Commission rejected subsection 5 because it was not consistent with the public interest. We expressed our concern that BG’s failure to pay according to its terms could subject BG’s end-user customers to disconnection by U S WEST through no fault on their part. The Commission expressed its concern that BG’s end user customers be notified if BG is going to be disconnected. The Final Order rejected subsection 5 because it included no provision for timely notifying the Commission to enable the Commission to take appropriate action to protect BG’s end user customers.

9. In Order No. 6053a in the Sterling docket, the Commission suggested that language be included to provide that U S WEST shall notify the Commission at the same time it notifies BG of a pending disconnection. The Commission suggested that the first sentence of Section 1.3 in the First Amendment could be revised to state that U S WEST "will notify Reseller and the Commission of such disconnection ten (10) days prior to the effective date of the disconnection." Section 1.3 has been amended to reflect the Commission's suggestion and is acceptable.

Dispute Resolution - Section VII.Q, Second Amendment Section 1.4

10. The Commission rejected Section VII.Q of the parties' agreement, the provision for dispute resolution. Section VII.Q contained detailed provisions for resolving disputes by an arbitrator. The Commission expressed concern that the resolution determined by an arbitrator who is not the Commission may not be consistent with the Telecommunications Act of 1996 and emphasized the importance of Commission review for a decision reached by an out of state arbitrator to ensure that it complies with Montana law prior to its going into effect. The Commission rejected Section VII.Q because it did not provide for notification to the Commission of issues to be arbitrated or of the subsequent decision reached by the arbitrator.

11. The parties' first revision to Section VII.Q, Section 1.4 in the First Amendment, was nearly identical to VII.Q. However, it included changes which went beyond what the Commission identified as problematic in the agreement and included ambiguous statements about the time the decision would go into effect and the Commission review of the award. The Commission expressed concerns in other dockets that the first revision did not provide for notice to the Commission prior to retaining an arbitrator, and that it permitted an arbitrator's decision to go into effect prior to Commission review and approval. The Commission suggested that the

parties revise this section to comply with the law and to provide that an arbitrated decision shall not go into effect before the Commission reviews and approves it.

12. The second revision to Section VII.Q states that the arbitrator's award "shall be final and binding and may be entered in any court having jurisdiction thereof subject to review by the Commission." It further provides that the parties shall advise the Commission that they will be settling a dispute through arbitration prior to retaining an arbitrator, that they will submit a copy of each arbitration opinion to the Commission within 10 days of service of such opinion, and that the arbitrator's decision shall become effective upon Commission approval or after the passage of 90 days of filing if the Commission takes no action concerning the filing. The revised section in the Second Amendment is acceptable.

#### CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. U S WEST is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA. BG, as a provider of regulated telecommunications services in the State of Montana, also will be regulated when it offers local exchange service in Montana as a competitive local exchange carrier.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The Commission has jurisdiction to approve amendments to the Interconnection Agreement negotiated by the parties and submitted to the Commission for approval according to Section 252(e)(2)(A). Section 69-3-103, MCA.

4. Commission approval of interconnection agreements and their amendments is subject to the requirements of federal law as set forth in 47 U.S.C. § 252. Section 252(e) limits the Commission's review of a negotiated agreement to the standards set forth therein for rejection of such agreements.

#### ORDER

THEREFORE, based upon the foregoing, it is ORDERED that the Second Amendment to Agreement for Service Resale between U S WEST Communications, Inc. and BG Enterprises, Inc. is APPROVED.

DONE AND DATED this 19th day of October, 1998, by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.  
A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.